



Civil Resolution Tribunal

Date Issued: September 14, 2018

File: ST-2017-006246

Type: Strata

Civil Resolution Tribunal

Indexed as: *The Owners, Strata Plan BCS 983 v. Wilcock et al*, 2018 BCCRT 518

B E T W E E N :

The Owners, Strata Plan BCS 983

APPLICANT

A N D :

Monika Wilcock and Brian Wilcock

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Graeme Nunn

INTRODUCTION

1. The applicant, The Owners, Strata Plan BCS 983 (strata) asks the Civil Resolution Tribunal (tribunal) to order the respondents, Monika and Brian Wilcock (owner) to comply with the strata's pet bylaws and pay \$200 in outstanding bylaw fines. The strata also seeks reimbursement of \$225 in tribunal fees.

2. The owner does not deny that she has, at times, more pets on her strata lot than allowed by the pet bylaws. The owner says that some of these pets are emotional support pets or that she is taking care of them for her relatives. The owner asks that I dismiss the strata's claims.
3. The owner is self-represented by Monika Wilcock. The strata is represented by a strata council member.
4. For the reasons that follow I find in favour of the strata.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the tribunal. The tribunal has jurisdiction over strata property claims brought under section 3.6 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
7. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
8. Under section 48.1 of the Act and the tribunal rules, in resolving this dispute the tribunal may make order a party to do or stop doing something, order a party to pay money, order any other terms or conditions the tribunal considers appropriate.

ISSUES

9. The issues in this dispute are:
 - a. Did the owner breach the strata's pet bylaws?
 - b. If so, are the fines the strata imposed against the owner valid?
 - c. Is the strata entitled to reimbursement of the \$225 tribunal fees?

BACKGROUND AND EVIDENCE

10. Though I have read all of the evidence provided, I refer only to evidence I find relevant to provide context for my decision.
11. The strata's relevant bylaws are the consolidated 2016 bylaws filed in the Land Title Office January 26, 2017.
12. The relevant sections of the bylaws which I will reference as the "pet bylaws" are:
 - (a) 3.1 which states: "an owner, tenant, occupant or visitor must not use a strata lot, the common property or common assets in a way that; (a) causes a nuisance or hazard to another person, (b) causes unreasonable noise, (c) unreasonably interferes with the rights of other persons to use and enjoy the common property, common assets or another strata lot."
 - (b) 4.1(e) which states: "an owner, tenant or occupant must not keep any pets on a strata lot other than one or more of the following: [...] (e) up to 2 dogs or cats – the maximum number of dogs or cats, in any combination, will not exceed 2 in total."
 - (c) 4.7 which allows the strata to give notice to the owner to remove a pet from the strata property if they are reasonably found to be a nuisance.
13. Section 38 of the bylaws allows the strata to impose a \$100 fine for a first offense and \$200 for a second offense for pet violations.

14. The strata provided evidence as follows:
- (a) A letter from the strata's property manager to the owner dated March 16, 2017 advising the owner's strata lot was in arrears, and in particular, \$200 for violation of the pet bylaws.
 - (b) A letter from the strata's property manager to the owner dated August 18, 2017 advising that the owner had violated bylaw 4.1(e) and the strata had levied a \$100 fine.
 - (c) An email from the owner to the strata's property manager dated September 21, 2017 acknowledging owning 2 pets and having additional pets in her strata lot.
 - (d) A letter from the strata's property manager to the owner dated October 2, 2017 advising the strata had received complaints regarding the number of dogs on the strata lot and providing 15 days to remove the additional animals from the strata lot.
 - (e) A letter from the strata's property manager to the owner dated March 6, 2018 requesting written proof that the animals in her the strata lot are emotional support animals.
 - (f) Photographs and correspondence from residents of the strata relating to violations of the pet bylaws. In particular, nuisance barking and too many pets on the owner's strata lot.
15. The owner provided a lengthy narrative regarding the history of her pets on the strata lot and her interactions with the strata's representatives, which I have considered. The owner did not provide any documentary evidence.

POSITION OF THE PARTIES

16. The strata requests that I order the following:
- (a) The owner comply with bylaw 4.1(e);

- (b) The owner reduce the nuisance barking caused by her pets;
 - (c) The owner pay her outstanding strata fines totalling \$200; and
 - (d) The owner pay the applicant's tribunal fees totalling \$225.
17. The strata argues that the owner has acknowledged breaching the pet bylaws and has not provided proof that the pets on her strata lot are emotional support animals.
18. The owner argues that the pets on her strata lot are emotional support animals and should be exempted from the pet bylaws. The owner also argues that the pets are taken care of for her family members and not permanently resident on the strata lot.
19. The owner requests that I dismiss the strata's claim.

ANALYSIS

Did the owner breach the strata's pet bylaws?

20. The pet bylaws contain two parts:
- (a) 3.1 states that an owner or occupant must not use a strata lot in a way that causes a nuisance or unnecessary noise.
 - (b) 4.1(e) states that an owner or occupant must not keep more than 2 dogs or cats (total) on a strata lot at any time.
21. I find it more likely than not that the owner has breached both section 3.1 and 4.1(e) of the bylaws on multiple occasions. I need not enumerate all of the occasions, but I am satisfied based on the evidence provided and the admissions of the owner that there were breaches of the pet bylaws.
22. The fact that some of the pets kept by the owner were not permanently resident on the strata lot does not exempt her from complying with bylaw 4.1(e). The wording of that section is clear that no more than 2 dogs or cats may be on a strata lot at

one time. I find that for the purposes of bylaw 4.1(e) a breach occurs even if the animals on the strata lot are not the exclusive property of the owner.

23. The owner has argued that her animals are “emotional support animals” and should be exempted from the pet bylaws on that basis. The strata has requested confirmation from the owner of the status of the support animals. The owner did not provide confirmation. I find there is insufficient evidence before me to determine whether the owner’s pets were emotional support animals. In any event, the only pets to which a pet bylaw does not apply under the SPA are guide dogs and service dogs or dogs that are members of a retired service dog team as defined in the *Guide Dog and Service Dog Act*.
24. I order that the owner comply with bylaws 3.1 and 4.1(e). In particular, I order that the owner keep no more than 2 dogs or cats on her strata lot at one time. I also order that the owner ensure that her pets do not cause a nuisance to other occupants or residents of the strata.

If so, are the fines the strata imposed against the owner valid?

25. Section 135 of the *Strata Property Act* (SPA) says that a strata corporation may impose a fine for a bylaw contravention if the strata has received a complaint and given the owner and tenant written particulars of the complaint, as well as a reasonable opportunity to answer the complaint, including a hearing before the strata council if requested. The SPA does not specify the form in which notice of the particulars of complaint must be given, nor does it define what constitutes a reasonable opportunity to answer the complaint.
26. Section 130 of the SPA requires that when a strata fine is issued, the person who is the subject of the allegation is entitled to the notice and hearing rights provided in section 135 of the SPA.
27. The strata has determined that the pet bylaws were breached and claims the owner owes \$200 in outstanding fines.

28. The strata must be in compliance with sections 130 and 135 of the SPA in order for the fines to be valid. I find that the letter dated August 18, 2017 constituted sufficient notice regarding the owner's breach of section 4.1(e) of the bylaws. There is no evidence before me that the owner was not given a reasonable opportunity to answer the complaint. I find that the \$100 fine levied in that instance was valid.
29. I am not satisfied that the strata complied with sections 130 and 135 of the SPA in respect of the other alleged outstanding fine amounts. There is no evidence before me that the owner received a notice and particulars of the alleged breach in that instance. There is also no evidence before me that the owner was given a reasonable opportunity to answer the complaint. I decline to order the owner pay the outstanding \$100 claimed by the strata.
30. I order the owner to pay the strata \$100 in respect of the August 18, 2017 fine.
31. The SPA does not permit interest to be charged on fines. However, the *Court Order Interest Act* (COIA) applies to tribunal disputes and I find the strata is entitled to pre-judgment interest under the COIA from August 18, 2017 on \$100, which I calculate to be \$0.75.

Is the strata entitled to reimbursement of the \$225 tribunal fees?

32. The strata was primarily successful in this dispute.
33. Under section 49 of the Act and the tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees. I see no reason to depart from the general rule in this case. I conclude the owner should pay the strata's tribunal fees in the amount of \$225.

DECISION AND ORDERS

34. I order as follows:
- a. The owner immediately comply with the strata bylaws, and in particular sections 3.1 and 4.1(e);
 - b. The owner immediately ensure her pets are not causing a nuisance in any area of the strata property;
 - c. The owner pay the strata \$100.00 outstanding for fine amounts within 30 days;
 - d. The owner pay the strata \$0.75 for pre-judgment interest within 30 days; and
 - e. The owner pay the strata \$225.00 for tribunal fees within 30 days.
35. The strata is entitled to post-judgement interest, as applicable.
36. Under section 57 of the Act, a party can enforce this final tribunal decision by filing, in the Supreme Court of British Columbia, a validated copy of the order which is attached to this decision. The order can only be filed if, among other things, the time for an appeal under section 56.5(3) of the Act has expired and leave to appeal has not been sought or consented to. Once filed, a tribunal order has the same force and effect as an order of the Supreme Court of British Columbia.
37. Orders for financial compensation or the return of personal property can also be enforced through the Provincial Court of British Columbia. However, the principal amount or the value of the personal property must be within the Provincial Court of British Columbia's monetary limit for claims under the *Small Claims Act* (currently \$35,000). Under section 58 of the Act, the Applicant can enforce this final decision by filing in the Provincial Court of British Columbia a validated copy of the order which is attached to this decision. The order can only be filed if, among other things, the time for an appeal under section 56.5(3) of the Act has expired and leave to appeal has not been sought or consented to. Once filed, a tribunal order

has the same force and effect as an order of the Provincial Court of British Columbia.

Graeme Nunn Tribunal Member